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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,190	03/04/2005	David Edward Foster	50179-117	3470
20277 7590 08/18/2009 MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096				
EXAMINER				
JACYNA J CASIMER				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
08/18/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/501,190

Applicant(s)

FOSTER, DAVID EDWARD

Examiner

J. Casimer Jacyna

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6, 9-12, 15-18, 20-25 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-12, 15-18, 20-25 and 38-40 is/are rejected.
- 7) ☒ Claim(s) 2-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 38-40, 9-12, 15-18 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groesbeck 5,810,185 in view of Reifsnnyder 2,493,086.

Groesbeck discloses a closure including a main closure 10 with a top portion having an opening 10a, a skirt 10f, a sealing rib 15a that seals with 15, a spout 10-1, a protuberance 18, a plug 10c, a top cap 11, a sealing member 19 that rides over 18, wherein the closure has a first position shown in figure 3 with the plug in an opening in the top portion and a second open position shown in figure 4 substantially as claimed but does not disclose the sealing member 19 to be a folded portion that extends radially inwardly to a circular free edge. However, Reifsnnyder teaches another sealing member 13 that also rides over a protuberance 6 having a folded over radially inward portion 14 that extends to a circular free edge 15 for the purpose of having a self locking cover. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the closure of Groesbeck with sealing member having a free edge as, for example, taught by Reifsnnyder in order to have a self locking cover.

3. Claims 38-40, 9-12, 15-18 and 20-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Groesbeck 5,810,185 in view of Pehr 4,401,227. Groesbeck discloses a closure including a main closure 10 with a top portion having an opening 10a, a skirt 10f, a sealing rib 15a that seals with 15, a spout 10-1, a protuberance 18, a plug 10c, a top cap 11, a sealing member 19 that rides over 18, wherein the closure has a first position shown in figure 3 with the plug in an opening in the top portion and a

second open position shown in figure 4 substantially as claimed but does not disclose the sealing member 19 to be a folded portion that extends radially inwardly to a circular free edge. However, Pehr another sealing member 8 that also rides over a protuberance 14 or 13 having a folded over radially inward portion that extends to a circular free edge as is the vertical portion of 8 as shown in figure 3 for the purpose of having a self locking cover. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the closure of Groesbeck with sealing member having a free edge as, for example, taught by Pehr in order to have a self locking cover.

4. Applicant's arguments filed 5/29/2009 have been fully considered but they are not persuasive. Applicant contends that the seal of Groesbeck is not partially released when the top cap is moved with respect to the spout. As stated in the middle of pages 2 and 5 in Applicant's arguments the feature that allows for a partial release of the seal is the air flow around a plurality of protuberances. However, claims 38-40 are generic to a single annular protuberance as disclosed in Groesbeck wherein protuberance 18 and element 19 of Groesbeck will form a seal with respect to each other. Since Groesbeck discloses the same protuberance and seal type structure as claimed, then apparatus of Groesbeck is considered to be capable of performing the functional activities associated with the claimed structure. Applicant is contending that a continuous annular protuberance will not partially release the seal. However, the claim language of claims 38-40 that defines "at least one protuberance" is broad enough to read on a single continuous annular protuberance. Therefore, the claim language of claims 38-40 reads

on a claimed embodiment or a claimed structure or range that is not capable of performing the claimed function of causing an at least partial release of the seal (in accordance with Applicant's arguments). Since Applicant's claim language is broad enough to include a continuous annular protrusion as in Groesbeck, then the Groesbeck device is considered as rejecting the claims. Having a folded over seal is considered an obvious art recognized equivalent in view of Reifsnnyder or Pehr.

5. Claims 2-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754